

**ASSEMBLY BILL**

**No. 1098**

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**Introduced by Assembly Member Saldana**

February 23, 2007

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An act to amend Sections 25514.5 and 25540 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 1098, as introduced, Saldana. Hazardous materials: administrative: penalties: liability.

(1) Existing law requires that, in order to protect the public health and safety and the environment, a business, as defined, establish and implement a business plan, meeting specified requirements, relating to the handling and release or threatened release of hazardous materials. A business that violates or knowingly violates any provision with regard to the business plan is liable to an administering agency for a prescribed administrative penalty.

This bill would remove the requirement that the amount of the administrative penalty be set by the governing board of the administrative agency.

(2) Existing law requires the implementation of the federal accident release prevention program, established pursuant to the federal Clean Air Act, with regard to the handling and storage of chemical and hazardous substances, along with certain amendments specific to the state. If there is a violation of the provisions of the program, specified administrative civil liability shall be imposed. If there is a knowing violation of the provisions of the program, after reasonable notice, specified administrative civil liability shall be imposed, and upon

conviction the person may be punished by imprisonment in the county jail for not more than one year.

This bill would require that a person or stationary source, as defined, that knowingly violates the provisions of the program, after reasonable notice and upon conviction, be punished by a fine not to exceed \$25,000 and imprisonment in the county jail for not more than one year.

Because this bill would create a new crime, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25514.5 of the Health and Safety Code  
2 is amended to read:

3 25514.5. (a) Notwithstanding Section 25514, any business  
4 that violates this article is liable to an administering agency for an  
5 administrative penalty, ~~in an amount which shall be set by the~~  
6 ~~governing body of the administering agency, but~~ not greater than  
7 two thousand dollars (\$2,000) for each day in which the violation  
8 occurs. If the violation results in, or significantly contributes to,  
9 an emergency, including a fire or health or medical problem  
10 requiring toxicological, health, or medical consultation, the  
11 business shall also be assessed the full cost of the county, city, fire  
12 district, local EMS agency designated pursuant to Section  
13 1797.200, or poison control center as defined by Section 1797.97,  
14 emergency response, as well as the cost of cleaning up and  
15 disposing of the hazardous materials, or acutely hazardous  
16 materials.

17 (b) Notwithstanding Section 25514, any business that  
18 knowingly violates this article after reasonable notice of the  
19 violation is liable for an administrative penalty, ~~in an amount which~~  
20 ~~shall be set by the governing body of the administering agency,~~  
21 ~~but~~ not greater than five thousand dollars (\$5,000) for each day in  
22 which the violation occurs.

1 (c) When an administering agency issues an enforcement order  
2 or assesses an administrative penalty, or both, for a violation of  
3 this article, the administering agency shall utilize the administrative  
4 enforcement procedures specified in Sections 25404.1.1 and  
5 25404.1.2.

6 SEC. 2. Section 25540 of the Health and Safety Code is  
7 amended to read:

8 25540. (a) Any person or stationary source that violates this  
9 article shall be ~~civily liable to the administering agency~~ *liable for*  
10 *administrative penalties* in an amount of not more than two  
11 thousand dollars (\$2,000) for each day in which the violation  
12 occurs. If the violation results in, or significantly contributes to,  
13 an emergency, including a fire, the person or stationary source  
14 shall also be assessed the full cost of the county or city emergency  
15 response, as well as the cost of cleaning up and disposing of the  
16 hazardous materials. When an administering agency issues an  
17 enforcement order or assesses an administrative penalty, or both,  
18 for a violation of this chapter, the administering agency shall utilize  
19 the administrative enforcement procedures specified in Sections  
20 25404.1.1 and 25404.1.2.

21 (b) Any person or stationary source that knowingly violates  
22 this article after reasonable notice of the violation shall be ~~civily~~  
23 ~~liable to the administering agency~~ *liable for administrative*  
24 *penalties* in an amount not to exceed twenty-five thousand dollars  
25 (\$25,000) for each day in which the violation occurs ~~and upon~~  
26 ~~conviction, may be punished by imprisonment in the county jail~~  
27 ~~for not more than one year~~. If the violation results in, or  
28 significantly contributes to, an emergency, including a fire, the  
29 person or stationary source shall also be assessed the full cost of  
30 the county or city emergency response, as well as the cost of  
31 cleaning up and disposing of any hazardous materials.

32 (c) *Any person or stationary source that knowingly violates this*  
33 *article after reasonable notice of the violation shall upon*  
34 *conviction be punished by a fine in an amount not to exceed*  
35 *twenty-five thousand dollars (\$25,000) for each day that the*  
36 *violation occurs and imprisonment in the county jail not to exceed*  
37 *one year. If the violation results in, or significantly contributes to*  
38 *an emergency, including a fire, the person or stationary source*  
39 *shall also be assessed the full cost of the county or city emergency*

1 *response, as well as the cost of cleaning up and disposing of any*  
2 *hazardous materials.*

3 SEC. 3. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.